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December 4, 2002

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Name: Elie H. Gendloff
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Commissioner for Patents
Washington, DC 20231

BOX NON-FEE AMENDMENT

Re: U.S. Utility Patent Application Serial No. 10/035,914 Filed November 7, 2001
Title: METHODS FOR INHIBITING PROLIFERATION OF ASTROCYTES AND ASTROCYTIC TUMOR CELLS AND USES THEREOF
Inventor: David E. Weinstein
Our File: 96700/677

Dear Sir:

Enclosed please find the following documents for filing with the above-identified patent application in the name of David E. Weinstein, entitled METHODS FOR INHIBITING PROLIFERATION OF ASTROCYTES AND ASTROCYTIC TUMOR CELLS AND USES THEREOF, comprising the following:

1. Amendment and Reply to Restriction Requirement in response to the Office Action of November 5, 2002 (7 pages) with Marked-Up Claims Pending After Amendment attached thereto (4 pages); and

2. Return receipt postcard.

Please acknowledge receipt of the enclosed papers by stamping the enclosed postcard and returning the same to us.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN
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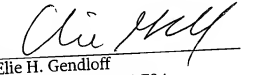
Dated: December 4, 2002
New York, New York

By: 
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#8 /A
12/11/02

AR&E Docket No. 96700/677

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Name: Elie H. Gendloff
Signature:

Applicant	:	David E. Weinstein
Serial No.	:	10/035,914
Filed	:	November 7, 2001
For	:	METHODS FOR INHIBITING PROLIFERATION OF ASTROCYTES AND ASTROCYTIC TUMOR CELLS AND USES THEREOF
Examiner	:	Liping Chen, Ph.D.
Group Art Unit	:	1632

AMENDMENT AND REPLY TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

This Amendment and Reply responds to the Office Action dated November 5, 2002 in the above identified case, which imposed a restriction requirement. Since this Reply is due on December 5, 2002, it is timely filed.

Restriction

In response to the restriction requirement imposed in the Office Action of November 5, 2002, applicant elects Group IX, directed to methods for assaying CD81 expression *in vitro*, with traverse with respect to Group X, directed to methods for assaying CD81 expression *in vivo*. Applicant contends that both groups generally utilize essentially the same biochemical tests for determining whether CD81 is present on astrocytes, and the patentability of the claims does not depend on whether the tests are done *in vitro* or *in vivo*. Since the methods of both groups require the same tests, the

same searches should be used for either group. Therefore, keeping Groups IX and X together would not impose a serious burden on the examiner. To properly impose a restriction requirement, there must be, *inter alia*, a serious burden on the examiner if the requirement is not imposed. See, e.g., MPEP 803. Since applicant contends there would not be a serious burden on the examiner to examine both Groups IX and X, both groups should be examined.

Amendment

Please cancel claims 1-30 without prejudice or disclaimer. Please amend claims 31-34 to read as follows:

31. (Amended) A method for determining whether a subject has an astrocytoma, the method comprising assaying for CD81 expression in a diagnostic sample of cells of astrocytic lineage of the subject, wherein no detection of expression of CD81 in cells of astrocytic lineage of the subject is diagnostic of an astrocytoma.

A1

32. (Amended) The method of claim 31, wherein the diagnostic sample of cells of astrocytic lineage of the subject is assayed *in vitro*.

33. (Amended) A method for assessing the efficacy of astrocytoma therapy in a subject who has undergone or is undergoing treatment for an astrocytoma, the method comprising assaying for CD81 expression in a diagnostic sample of cells of astrocytic tumor cells of the subject, wherein no detection of expression of CD81 in astrocytic tumor cells of the subject is indicative of unsuccessful astrocytoma therapy.

A1 cont'd.

34. (Amended) The method of claim 33, wherein the diagnostic sample of cells of astrocytic lineage of the subject is assayed *in vitro*.

Please add the following new claims 35-64.

35. (New) The method of claim 31, wherein the subject is a mammal.

36. (New) The method of claim 31, wherein the subject is a human.

A2

37. (New) The method of claim 31, wherein CD81 expression is assayed using an immunological technique.

38. (New) The method of claim 37, wherein the immunological technique utilizes an antibody, an Fab fragment, or an $F(ab')_2$ fragment.

39. (New) The method of claim 38, wherein the antibody, Fab fragment, or $F(ab')_2$ fragment is monoclonal.

40. (New) The method of claim 38, wherein the antibody, Fab fragment, or $F(ab')_2$ fragment is polyclonal.

41. (New) The method of claim 38, wherein the antibody, Fab fragment, or $F(ab')_2$ fragment is labeled with a detectable marker.

42. (New) The method of claim 41, wherein the detectable marker is a nonradioactive or a fluorescent marker.

43. (New) The method of claim 41, wherein the detectable marker is a radioactive marker.

44. (New) The method of claim 31, wherein CD81 expression is assayed using hybridization analysis.

A2 cont'd

45. (New) The method of claim 44, wherein the hybridization analysis is a northern blot analysis for CD81 mRNA in mRNA extracted from cells of astrocytic lineage.

46. (New) The method of claim 44, wherein the hybridization analysis utilizes an RNA probe.

47. (New) The method of claim 44, wherein the hybridization analysis utilizes a DNA probe.

48. (New) The method of claim 32, wherein CD81 expression is assayed using RT-PCR.

49. (New) The method of claim 31, wherein CD81 expression is assayed using fluorescence imaging techniques.

50. (New) The method of claim 31, wherein CD81 expression is assayed using radiation detection.

51. (New) The method of claim 32, wherein CD81 expression is assayed using immunocytofluorometry.

52. (New) The method of claim 33, wherein the subject is a human.

53. (New) The method of claim 33, wherein CD81 expression is assayed using an immunological technique.

A2 cont'd

54. (New) The method of claim 53, wherein the immunological technique utilizes an antibody, an Fab fragment, or an $F(ab')_2$ fragment.

55. (New) The method of claim 54, wherein the antibody, Fab fragment, or $F(ab')_2$ fragment is monoclonal.

56. (New) The method of claim 54, wherein the antibody, Fab fragment, or $F(ab')_2$ fragment is labeled with a detectable marker.

57. (New) The method of claim 33, wherein CD81 expression is assayed using hybridization analysis.

58. (New) The method of claim 57, wherein the hybridization analysis is a northern blot analysis for CD81 mRNA in mRNA extracted from cells of astrocytic lineage.

59. (New) The method of claim 57, wherein the hybridization analysis utilizes an RNA probe.

60. (New) The method of claim 57, wherein the hybridization analysis utilizes a DNA probe.

A2 cont'd

61. (New) The method of claim 34, wherein CD81 expression is assayed using RT-PCR.

62. (New) The method of claim 33, wherein CD81 expression is assayed using fluorescence imaging techniques.

63. (New) The method of claim 33, wherein CD81 expression is assayed using radiation detection.

64. (New) The method of claim 34, wherein CD81 expression is assayed using immunocytofluorometry.

Remarks

Claims 1-30 are cancelled without prejudice or disclaimer. The cancellation of claims 1-30 is made solely because those claims are not directed to the invention of elected Group IX or traversed Group X. The cancellation is not made for any reason related to any perceived lack of patentability of those claims. Claims 31-34 have been amended, and claims 35-64 have been added, to more particularly point out and distinctly claim the invention. The amendments to claims 31-34 are not related to any